INDEX

CITATIONS

Cases:

In the Supreme Court of the United States

OCTOBER TERM, 1965

No. 594

JOHN T. GOJACK, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINIONS BELOW

The opinion of the court of appeals on the judgment under review (Pet. App. A) is reported at 348 F.2d 355. The first opinion of the court of appeals is reported at 280 F.2d 678, and the opinion of this Court reversing the court of appeals' first decision is reported *sub nom. Russell* v. *United States* at 369 U.S. 749.

JURISDICTION

The judgment of the court of appeals (Pet. App. A, pp. 31-32) was entered on May 27, 1965, and the court denied a petition for rehearing on July 23, 1965 (Pet. App. B, p. 33). On July 30, 1965, Mr. Justice White extended the time in which to file a petition for a writ of certiorari to and including September 21, 1965, and the petition was filed on that day. The jurisdiction of this Court is invoked under 28 U.S.C. 1245(1).

QUESTIONS PRESENTED

1. Whether the House Un-American Activities Committee has the power to investigate Communist activities.

2. Whether the indictment was sufficient.

3. Whether the Committee (a) authorized the investigation and (b) delegated authority to conduct it to the subcommittee before which petitioner appeared.

4. Whether petitioner was adequately apprised of the pertinency of the questions that he refused to answer.

5. Whether he was adequately apprised that the subcommittee had rejected his objections to answering the questions.

STATUTES AND RULES INVOLVED

The pertinent portions of 2 U.S.C. 192, Rule XI of the Rules of the House of Representatives, Rule 7(c)

of the Federal Rules of Criminal Procedure and Rule I of the Rules of Procedure of the House Committee on Un-American Activities appear as Appendix D to the petition for certiorari.

STATEMENT

Petitioner was charged in a six-count indictment with having refused to answer six questions pertinent to matters under inquiry by the Committee on Un-American Activities of the House of Representatives, in violation of 2 U.S.C. 192 (R. 1-3). He waived his right to trial by jury, and was found guilty on all counts. A general sentence of three months' imprisonment plus a $200 fine was imposed (R. 11). Petitioner had been charged with the same offense in an indictment returned in December 1955. Upon trial of that indictment, he had been convicted and the convictions affirmed by the court of appeals. *Gojack* v. *United States*, 280 F.2d 678. But this Court had reversed his conviction (along with the convictions in five other contempt of Congress cases) on the ground that the indictments were defective. *Russell* v. *United States*, 369 U.S. 749. Petitioner was then reindicted.

The pertinent facts may be summarized as follows:

As part of a continuing investigation into Communist activities in the labor field, including infiltration into labor organizations and dissemination of Communist labor propaganda, the Committee had been engaged intermittently in investigating alleged Com-

munist Party activities by officials of the United Electrical, Radio and Machine Workers of America (U.E.) from August 1949 until February 1955 when petitioner appeared before the Committee (Gov't Ex. 11, Gov't Ex. 13; R. 20). It had received sworn testimony in 1951 from one Decavitch, a long-time district president of the U.E. and a former member of the Communist Party, that the Communist Party had infiltrated the union to the extent that, of its important officials, "99.9 per cent" were "pure Communist Party members" (R. 20-21). In July 1953 another former Communist Party member, Jack Davis, who had been an organizer for the U.E., testified that all of the U.E. organizers who attended meetings were members of the Communist Party (R. 21-23). Before petitioner was subpoenaed, the Committee had information that he was a vice-president of the national union and the president of District 9 (R. 23).

On February 9, 1955, at a meeting of the Committee, seven members present, a motion was made and passed that petitioner be subpoenaed to appear "before a Subcommittee of the Committee on Internal Security" *(sic)* in open hearings at Fort Wayne, Indiana. At the same meeting the Chairman of the Committee appointed a subcommittee to conduct the Fort Wayne hearings (Gov't Ex. 5; R. 271-272).[1]

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[1] On January 20, 1955, the Committee, in executive session, eight of the nine members being present, had adopted a resolution that its Chairman be authorized to appoint subcommittees "for the purpose of performing any and all acts which

On February 9, 1955, the Committee announced that hearings would begin in Fort Wayne, Indiana, on February 21 (R. 169, 175, 178-179). A newspaper account mentioned petitioner, who was a resident of Fort Wayne, as a prospective witness (R. 179). On February 10, Congressman Walter, the Chairman of the Committee, received a telegram from petitioner protesting on behalf of the union the scheduling of the hearings for February 21, in view of a National Labor Relations Board election at the Magnavox plant to be held on February 24, 1955, involving the U.E. and rival unions (Gov't Ex. 9; R. 171, 174). The telegram claimed, among other things, that the hearing would be a "flagrant use of a Congressional Committee for union-busting", that "we have every right to ask whether the Magnavox Company is paying for this Congressional assistance in union-busting", and that the Committee was run by "publicity-mad zealots" who "tarnish[ed]" the Congress with their "stench" (R. 171-173).

On February 14, 1955, George Goldstein, U.E.'s Washington representative, sought a continuance of the hearing (R. 158-162, 174). Because of the tone of petitioner's telegram, Mr. Goldstein's request was heard before the Committee at a recorded session (R. 154, 162), at which the Chairman told Mr. Goldstein that the Committee first knew of the NLRB election when the Chairman received petitioner's telegram (R.

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the Committee as a whole is authorized to perform" (Gov't Ex. 7; R. 267-268).

157). The following exchange then took place (R. 158):

> Mr. Goldstein: Let me just say this. As far as I am concerned, this visit of mine was simply for the purpose of asking the question that I mentioned a moment ago, whether or not you were aware of [the NLRB] election, and if not, to tell you about it, and to say this: that it looked to us and it would look to a lot of people as though the coincidence of the two was more than a coincidence. Now, I am saying that without accusing you.
>
> Chairman Walter: I do not care if you accuse me or not. I do not care what you have to say about me. But this telegram said very definitely that this was a case of union-busting. Now, there is no one on this committee interested in busting unions. All of us have very established records, but all of us are interested in seeing your union go out of business, because we do not believe it is good for the United States.

Although repeatedly asked to do so (R. 160-162), Mr. Goldstein refused to state any definite knowledge he might have about an NLRB election. The Committee adjourned without any action being taken (R. 162).

Petitioner's subpoena to appear at the February 21 hearing was served upon him on February 15, 1955 (R. 17). The next day, the counsel for the Committee, Frank Tavenner, received a telegram from an attorney representing petitioner which requested a continuance until "any time after next week" because of the attorney's extremely heavy schedule and the im-

pending NLRB election at the Magnavox plant (R. 17). The request was at first denied. But after further communication between counsel Mr. Tavenner inquired into the proposed election and explained the situation to Chairman Walter, who agreed that the hearings be postponed (R. 18). The hearings were rescheduled for February 28, 1955, in Washington, D. C. Petitioner's counsel was notified of the rescheduling and a new subpoena was issued and served on petitioner (R. 19).

He appeared on February 28 and March 1, 1955, before a subcommittee in Washington, D. C. Upon convening the subcommittee on the morning of February 28, Representative Moulder, the acting chairman, explained the purposes of the hearings as follows (R. 54; Gov't Ex. 12, p. 19[2]):

> There will be considered at this hearing testimony relating to Communist Party activities within the field of labor, the methods used by the Communist Party to infiltrate labor organizations, and the dissemination of the Communist Party propaganda.

Before the first witness, Julia Jacobs, was sworn, her attorney filed with the Committee a motion (Def. Ex. 1) on her behalf and on behalf of two other clients of his, petitioner and Lawrence Cover, also subpoenaed to appear before the subcommittee (Hear-

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[2] Government Exhibit 12 is the record of the Hearings Before the Committee on Un-American Activities, House of Representatives, 84th Congress, 1st Sess., entitled *Investigation of Communist Activities in the Fort Wayne, Ind., Area* (hereinafter referred to as "Hearings").

ings, p. 20; R. 55), claiming that the Committee did not have a valid legislative purpose; that no criminal charges had been made against the three witnesses, and that, in any event, under Article I, Section 3 of the Constitution only the courts can investigate crime; that the Committee's authorizing resolution did not give it the power to engage in breaking a union, and that if it purported to confer this power, it violated the First Amendment; that the authorizing resolution was unconstitutionally vague; and that compulsory disclosure of political beliefs and associations violated the First Amendment.

At the outset of petitioner's testimony on February 28, he objected that the investigation did not have "a bona fide legislative purpose" (Hearings, p. 72; R. 60). After a colloquy concerning "union busting", Congressman Doyle, a member of the subcommittee, told petitioner that "[i]f you will tell us the truth and the facts about the extent to which there are Communists in your union, that will be helpful. * * * We want to know if you are a Communist and the extent to which you have been" (Hearings, p. 79; R. 62). Petitioner testified that he was still president of district council 9, vice-president of the national union, and a member of its general executive board (Hearings, pp. 73, 83-84; R. 60).

When asked whether he had ever been a member of the Communist Party while holding any of these union offices, petitioner stated that the Committee did not have the "right to investigate my political beliefs or affiliations, especially so when its purpose is union-

busting" (R. 63-65). The question was rephrased several times, but he still refused to answer, on the grounds that he had signed affidavits annually from 1949 to 1954 that he was not a Party member, and that the question violated the First Amendment (R. 63, 66-67). Petitioner was then asked whether he had ever been a member of the Communist Party (R. 68, 69-70), and again invoked the First Amendment, disclaiming any reliance on the Fifth Amendment (R. 70). He was also asked whether he had been a Party member at any time during 1948 (R. 66, 73). He refused to answer on the ground that the question violated the First Amendment and that the hearing had no legislative purpose (R. 66-67, 73). He then refused to say whether he was "now a member of the Communist Party",[3] on the grounds that his affidavit stated that he was not a Communist, that the question violated the First Amendment, and that "I am not going to cooperate with union busters" (R. 74-76). The hearings were then adjourned for the day (Hearings, p. 89).

Petitioner was the first witness when the hearings were resumed on March 1, 1955. After further questions about Communist activities in labor unions (Hearings, pp. 91-92; R. 76-77), the Committee asked whether petitioner had attended a union meeting in 1946 at which he presented a letter written to him by the secretary of the Communist Party (R. 78). The Committee read to petitioner the minutes of the

[3] This refusal formed the basis of count one of the present indictment.

meeting, which said that a letter had been sent to "Brother Gojack" from the secretary of the Party offering to donate a hundred copies of the Daily Worker (R. 82). Petitioner could not recall these events, nor could he recall who was the Party secretary or chairman in Indiana at the time (R. 82-83, 86-87). Petitioner repeated his objections to the hearings on the ground that they had no legislative purpose and violated the First Amendment, as well as that they exceeded the authority given the Committee by Congress (R. 84, 88-89). The Committee counsel asked petitioner whether he was acquainted with Elmer Johnson[4] (R. 83, 90). Congressman Scherer stated that "[y]ou have left us under the impression at this point that by reading the newspapers you knew that Johnson was chairman of the Communist Party of Indiana and I am asking you if that is the only way that you knew Johnson" (R. 90). Petitioner refused to answer this question (count two). He based his refusal on the ground of the Committee's alleged use of paid informers, whom he called liars, on the First Amendment, and on the Committee's lack of authority under its authorizing resolutions to break a union (Hearings, pp. 102-104; R. 91-92).

After charging that a former member of the Committee had used a "paid liar's testimony to try to break [a] strike" (Hearings, p. 105; R. 93), petition-

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[4] The Committee had heard testimony that Elmer Johnson was the chairman of the Communist Party in Indiana (R. 25-27).

er refused to say whether he knew Henry Aron[5] on the same grounds that he had refused to answer the earlier questions, particularly the Committee's use of informers, and the First Amendment (Hearings, p. 104; R. 92). He was subsequently asked, and refused to answer on the basis of the First Amendment, whether Johnson or Aron ever addressed a group of people when petitioner was present (count three) (Hearings, p. 106; R. 94). Petitioner was also questioned concerning the State Department's refusal to issue him a clearance in 1952 on security grounds (Hearings, pp. 112-118, 120, 122-123, 129-132). During this discussion, after Petitioner objected that the Committee was attempting to find him guilty without a trial, Congressman Doyle stated (*id.* at p. 125):

> [W]e are not here finding anybody guilty. We are here as a group of Congressmen trying to find out the extent to which Communists have infiltrated your union, if they have—the union of which you are the executive vice president. That is what we are here for, young man; not to find you guilty of anything, but to find out the extent to which you know of Communist domination or control in your union, if there is such domination and control or infiltration.

Petitioner testified that he knew a Russell Nixon, but when asked whether he knew Nixon to be a Party member, petitioner said that he knew him as

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[5] The Committee had heard testimony that Henry Aron was the secretary of the Communist Party in Indiana (R. 24).

legislative representative of the U.E. in Washington.[4] Petitioner said that he would not answer questions concerning political beliefs and affiliations because the Committee lacked jurisdiction (Hearings, p. 133; R. 96, 100-102). He then refused for the second time to say whether he knew Russell Nixon to be a member of the Communist Party (count four), on the ground that the Committee's authorizing resolution did not give the Committee power to expose people (Hearings, p. 134; R. 102-103).

The Committee's counsel handed petitioner a letter to him from Russell Nixon, sent immediately after a "peace pilgrimage" to Washington, enclosing a letter from the Metal Workers Trade Union, an organization that the Committee had reason to believe was Communist-dominated (Hearings, p. 139). Petitioner admitted that he had sent the latter letter, which praised the Stockholm peace appeal, to locals of the U.E. (Hearings, pp. 144-145). Committee counsel noted that petitioner had said that he had been involved in many meetings on behalf of peace, and informed petitioner that the Committee believed that the Communist Party had been involved in the Stockholm peace appeal and similar activities (Hearings, pp. 141-145; R. 103). Petitioner then refused to answer the question whether he had taken "an active

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[4] Nixon had earlier appeared as a witness before the Committee and refused to answer questions concerning his alleged Communist Party activities (R. 96-100). Dorothy Funn, a former member of the Communist Party, had testified before the Committee in 1953 that Russell Nixon was a member of the Communist Party (R. 32-40).

part in the peace pilgrimage to Washington which was organized by one of the 'front' organizations know as the American Peace Crusade" (count five) (Hearings, p. 145; R. 104). When petitioner based his refusal to answer on the First Amendment, the Committee counsel said (Hearing, p. 145; R. 104-105):

> I want to make it clear, Mr. Gojack, that I am not interested at all in what your beliefs or opinions were about those matters. What I am interested in is the extent to which the Communist Party was engaged in manipulating peace moves in this country in behalf of a foreign power. * * *

Congressman Doyle said (Hearings, pp. 145-146; R. 105):

> Mr. Chairman, may I add * * * that I am also interested in knowing what the witness knows about the extent to which the American Communist Party, in connection with these peace moves or otherwise, was using the leadership of American labor unions, especially any labor union that the witness might have been a member of at that time or had any connection with. The question is the extent to which the Communist Party had infiltrated American labor unions * * *, the extent to which they were using it then and are using it now for their conspiratorial purposes.

Petitioner refused, on the grounds he had already stated, to say whether he had taken part in the pilgrimage to Washington, whether he was a member of the American Peace Crusade, and whether he had frequently served as chairman of its meetings (Hearings, p. 148).

Petitioner was shown a copy of the February 1, 1951, issue of the Daily Worker, which listed a "John Gojack, international vice president, UERMWA, Fort Wayne, Ind." as an initial sponsor of the American Peace Crusade (R. 107; see R. 30-31).[1] Petitioner refused, on the grounds he had previously stated, to answer the question who had solicited him as sponsor; nor would he say what method of solicitation had been used (count six) (Hearings, pp. 149-153; R. 108).

ARGUMENT

Petitioner's first contempt of Congress conviction was reversed by this Court in *Russell* v. *United States*, 369 U.S. 749, on the ground that the indictment was insufficient in failing to set forth the subject of the Committee's inquiry. Petitioner was reindicted and again convicted, and his conviction was unanimously affirmed by the court of appeals. While presenting a number of other grounds to support his contention that his conviction should not be upheld, petitioner does not now contend that the courts below failed to comply with the mandate of *Russell* or that the indictment is insufficient for the same reasons found by this Court here. We submit that, in the circumstances of this case, the grounds presently advanced by petitioner are not meritorious and do not warrant further review.

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[1] The Committee also had a leaflet of the American Peace Crusade, which was signed by a "John Gojack", entitled "Bring Our Boys Home From Korea. Make Peace With China Now" (R. 31).

1. A number of petitioner's contentions raise, under various guises, the very broad question of the basic legitimacy of the House Un-American Activities Committee's function. In contending that the Committee's inquiry here was an unconstitutional exercise of a non-legislative purpose of exposure for exposure's sake, that the statute creating the Committee is unconstitutional on a number of grounds, that the investigation invaded petitioner's First Amendment rights of belief and association, and that the entire proceeding constituted a Bill of Attainder, petitioner is in effect contending that Congress has no power to investigate Communist activities. Such a broad contention is foreclosed by *Barenblatt* v. *United States*, 360 U.S. 109, and cases following it. *Braden* v. *United States*, 365 U.S. 431; *Wilkinson* v. *United States*, 365 U.S. 399. As this Court noted only two Terms ago, in *Gibson* v. *Florida Legislative Comm.*, 372 U.S. 539, 549, it is constitutionally "permissible [for the Legislature] to inquire into the subject of Communist infiltration of educational or other organizations", because "the governmental interest in controlling subversion and the particular character of the Communist Party and its objectives outweigh the right of individual Communists to conceal party membership or affiliations". Membership in the Party is "a permissible subject of regulation and legislative scrutiny." *Id.*, p. 547.

Petitioner's specific assertions in support of his broad attack upon the Committee's legitimacy—that the dominant purpose of the investigation was exposure unrelated to any *bona fide* legislative purpose,

and that the Committee had no legislative purpose in questioning him—are factually unfounded, as the courts below found. The record shows that the Committee had information that the union of which petitioner was an important official was dominated by Communists. The problem of Communist infiltration of labor unions has been a continuing, and plainly valid, object of congressional concern—as is attested by the non-Communist affidavit provisions of the Labor Management Relations Act of 1947 (see *American Communications Assn.* v. *Douds*, 339 U.S. 382, 390-391, 406) and the amendments thereto added by the Labor-Management Reporting and Disclosure Act of 1959. The Committee here reasonably believed that petitioner could supply information concerning Communist activities in the union. The Committee had sworn testimony that virtually all of the union's officers were Communist Party members. Petitioner was admittedly general vice president of that union and president of District No. 9. The Committee had further information linking petitioner with Russell Nixon, a lobbyist for the union who had been identified by a witness as a member of the Communist Party, and with the American Peace Crusade, which the Committee believed to be a Communist-front organization. That the Committee's purpose in these hearings was to elicit information about Communist activities—rather than to "bust" unions or expose or convict petitioner—was repeatedly stated by the Committee members (see Statement, *supra*, pp. 11, 13; R. 61, 132-134; Hearings, pp. 52, 65).

The circumstances upon which petitioner principally relies to show that the Committee did not have a

valid legislative purpose is that the hearings were first scheduled to be held shortly before an NLRB election in which U.E. was involved. But the hearings were not held as first scheduled; they were postponed until after the election upon receipt by the Committee of the first reasonable request for delay and of formal notice of the election. Petitioner's original telegram contained no request for postponement, and U.E.'s Washington representative, in making such a request, had refused to state any information he might have concerning the election date. It therefore became necessary for the Committee's counsel to make his own inquiry into the election. When he ascertained the facts, a postponement was promptly directed by the Chairman of the Committee. No member of the Committee had any knowledge of the election until petitioner's first telegram.[8]

The facts of this case bring it squarely within the holding of *Barenblatt* and the cases following it. We submit that reconsideration of those decisions is not warranted here.[9]

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[8] Insofar as petitioner's claim of improper legislative purpose is based on statements of the Chairman of the Committee and its employees, what petitioner alleges to be the Committee's methods of operation, and that the Committee's investigations generally are conducted for the purpose of exposure, not legislation, this Court has twice rejected, in *Barenblatt*, *supra*, and in *Watkins* v. *United States*, 354 U.S. 178, such a claim based on identical evidence. Compare R. 195-254 with the Record, pp. 77, 262, 265-266 and petitioner's brief in *Barenblatt*, No. 35, Oct. Term, 1958, and the Record, pp. 11-16, 58-64 and 98-168 and petitioner's brief in *Watkins*, No. 261, Oct. Term, 1956.

[9] Petitioner asks reconsideration of them on the ground that in recent years the menace of Communism, at least do-

2. Petitioner contends that the second indictment was fatally insufficient in that it failed to set forth in detail the authority of the subcommittee to conduct the inquiry. In *Seeger* v. *United States*, 303 F.2d 478 (C.A. 2) (following *United States* v. *Lamont*, 236 F.2d 312 (C.A. 2)), the Court of Appeals for the Second Circuit held that an indictment for contempt of Congress involving the House Un-American Activities Committee must show that the subcommittee was in fact authorized to conduct the inquiry in question. The Court of Appeals for the District of Columbia Circuit, on the other hand, regards a conclusory allegation of authority as sufficient for purposes of the indictment. *Sacher* v. *United States*, 252 F.2d 828, rev'd on other grounds, 356 U.S. 576; *Shelton* v. *United States*, 280 F.2d 701, reversed on other grounds *sub nom. Russell* v. *United States*, 369 U.S. 739.

Insofar as there may be a conflict on this point between the circuits, this is not a proper case to resolve it. For here the indictment was plainly sufficient even under the Second Circuit's strict standard. The indictment [10] alleges the legislation establishing the

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mestically, has diminished. However that may be, the hearings in which petitioner refused to answer the Committee's questions were held in 1955, one year after the hearings involved in *Barenblatt* and three years *before* those involved in the *Braden* and *Wilkinson* cases.

[10] As here pertinent, the indictment (R. 1) reads as follows:

INTRODUCTION

The Committee on Un-American Activities of the House of Representatives, created and authorized by the Legislative

House Committee on Un-American Activities as the Legislative Reorganization Act of 1946, Section 121 (q), 60 Stat. 828, and the specific House Resolution reaffirming its existence at the beginning of the new Congress as H. Res. 5, 84th Congress.[11] These set forth the scope of the au-

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Reorganization Act of 1946, Section 121(q), (60 Stat. 828), and by H. Res. 5, 84th Congress, at a meeting on February 9, 1955, by motion agreed to, authorized defendant Gojack to be subpenaed to appear before a Subcommittee of the Committee in open hearing at Fort Wayne, Indiana. The subject of these hearings was Communist Party activities within the field of labor, being a subject and question of inquiry within the scope of the authority of the Committee. On February 9, 1955, the Chairman of the Committee, pursuant to his authority granted by Committee resolution of January 20, 1955, appointed a Subcommittee to conduct the aforesaid hearings and set the time at February 21, 1955. Upon the request of the defendant herein for a postponement, the Chairman, on February 18, 1955, continued the aforesaid hearings until February 28, 1955, in Washington, D. C., which rescheduling was approved by the Committee on February 23, 1955.

[11] Both the Act and the Resolution are set forth, in pertinent part, as a preface to the printed hearings, Gov't Ex. 12. Both provide:

Rule X

Sec. 121. Standing Committees

* * * *

17. Committee on Un-American Activities, to consist of nine members.

Rule XI

Powers and Duties of Committee

* * * *

(q) (1) Committee on Un-American Activities.

(A) Un-American activities.

(2) The Committee on Un-American Activities, as a whole or by subcommittee, is authorized to make from time to time

thority granted to the parent Committee, and specifically provide that such authority may be exercised by subcommittees. The indictment then relates that the parent Committee, at a meeting on February 9, 1955, authorized that petitioner be subpoenaed before hearings to be conducted by a subcommittee, and that this subcommittee was appointed by Chairman Walter pursuant to Committee resolution of January 20, 1955. This resolution (Gov't Ex. 7; R. 268) provided that the Chairman was "authorized * * * to appoint subcommittees * * * for the purpose of performing any and all acts which the Committee as a whole is authorized to perform." The indictment then alleges that the hearings at which appellant testified were held by the subcommittee under the specified "appointment and authorizations" (R. 2).

Thus, here, unlike *Seeger* or *Lamont*, the indictment sets forth the entire chain of authority from Congress to the subcommittee which conducted the particular investigation. The defect in the

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investigations of (i) the extent, character, and objects of un-American propaganda activities in the United States, (ii) if the diffusion within the United States of subversive and un-American propaganda that is instigated from foreign countries or of a domestic origin and attacks the principle of the form of government as guaranteed by our Constitution, and (iii) all other questions in relation thereto that would aid Congress in any necessary remedial legislation.

* * * *

For the purpose of any such investigation, the Committee on Un-American Activities, or any subcommittee thereof, is authorized to sit and act at such times and places * * * to hold such hearings, to require the attendance of such witnesses and the production of such books, papers, and documents, and to take such testimony, as it deems necessary. * * *

indictment involved in *Seeger* was that one of the authorizing resolutions—an essential step in the chain of authority—was left out.[11] There is no such defect in the present indictment; no link in the chain of authority was omitted.

3. (a) The court below found, we think correctly, that the investigation of which the hearings at which petitioner was questioned were a part had been approved by the Committee as required by its Rule I. Indeed, any other inferences from the evidence would be unreasonable. The hearings were part of a continuing investigation by the Committee into Communist Party activities in the labor field, an investigation which the Committee in its annual reports (reflecting the views of all of its members) specifically reported on in 1954 and 1955, and upon which it based legislative recommendations in 1953. It strains

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[11] "The first paragraph of indictment purports to relate the substance of a resolution passed by the Committee on Un-American Activities on June 8, 1955 directing the subcommittee to conduct the investigation. The second paragraph then states that 'pursuant to said direction' the subcommittee conducted the hearings at which Seeger appeared as a witness. But the resolution of June 8, 1955 * * * was *not* such an authorization to the subcommittee. It was merely a direction to the parent Committee's clerk to proceed with an investigation. * * * The resolution of July 27, 1955 * * *, which actually purports to authorize the subcommittee to proceed with the hearings was nowhere mentioned. In other words, * * * the indictment contained a wholly misleading and incorrect statement of the basis of that authority." 303 F.2d at 484. The concurring opinion in *Seeger* points out that in *Lamont*, "No allegations whatsoever of authority or scope were alleged" in the indictment. 303 F.2d at 486.

credulity to suppose that this continuing investigation had *not* been approved by the Committee. The hearings at which petitioner appeared were plainly a part of this investigation. As the acting Chairman stated at the outset of the hearings, their purpose was to elicit testimony about Communist activities in the labor field.

(b) There was a proper delegation to the subcommittee of authority to conduct the hearings in question. Both the authorizing statute and the authorizing resolution of the parent Committee empower subcommittees to exercise the full authority of the Committee (see note 11, pp. 19-20, *supra*). The resolution of January 20, 1955 (*supra*, p. 20) was plainly broad enough to encompass the subject of the hearings.

4. The question whether petitioner was adequately apprised of the pertinency of the questions asked him to the subject under inquiry by the subcommittee is not properly presented in this case. For petitioner did not raise the issue of pertinency at the hearings. *Barenblatt* v. *United States*, 360 U.S. 109; *Deutch* v. *United States*, 367 U.S. 456. His "general challenge to the power of the Subcommittee" was, of course, not sufficient to raise the pertinency issue. 360 U.S. at 124. In any event, the subject under inquiry and the pertinency of the questions were made abundantly clear to petitioner both in the Chairman's opening statement [13] and in the course of questioning by the

[13] It appears that this statement was made in the presence of petitioner, who testified later in the day. Immediately after

Committee. Petitioner's obvious understanding of these matters is indicated by his answers.[14] The opening statement of the Chairman (Statement, *supra*, p. 7) did more "than paraphrase the authorizing resolution and give a very general sketch of the past efforts of the Committee" (*Watkins* v. *United States*, 354 U.S. 178, 209-210). It was a concise explanation of the subject under inquiry (*i.e.*, Communism in the field of labor), and recited the Committee's belief that the witnesses called had first-hand knowledge of Communist Party activities. Despite the fact that petitioner made no pertinency objection, the Committee gave him additional detailed explanations of its purpose in asking the questions forming the basis of counts four and five (Statement, *supra*, pp. 11-13). These supplementary explanations clearly satisfied the pertinency requirements of *Watkins*. Counts one, two, three and four, involving petitioner's Communist Party affiliations and his knowledge of the Communist Party affiliations of others, were

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it was made, Julia Jacobs, the first witness for that day, was requested to come forward to testify (R. 54, 55). Petitioner evidently heard her testimony (Hearings, p. 72), and she was represented by the same attorney who represented petitioner (R. 55, 57). There is additional evidence that petitioner was present when the statement was made (R. 134-138).

[14] Indeed, petitioner took every opportunity to demonstrate to the subcommittee his complete understanding of the area that they were investigating and the questions that he would be asked concerning that area. He indicated at one time that he knew what evidence the subcommittee would use to question him (R. 79-81; see, also, *e.g.*, Hearings, p. 103, and R. 93).

pertinent on their face. See *Barenblatt, supra*, 360 U.S. at 125.[15]

5. Petitioner's claim that the Committee was required and failed to overrule his written objections to the Committee's jurisdiction before he was questioned is not properly before this Court, since, as pointed out by the court of appeals (348 F.2d at 356-358), it was not raised by petitioner's experienced counsel in either the district court or the court of appeals. Petitioner concedes as much and offers no justification or excuse (Pet. 28, n. 14).

In any event, the claim is without merit. Petitioner's objections went not to specific questions but to the very jurisdiction of the Committee to proceed with the inquiry (R. 55, 84).[16] That the subcommittee had in fact rejected these objections[17] was made clear to petitioner by the subcommittee's action in proceeding with the hearings and calling the three wit-

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[15] Since petitioner was given a general sentence on all counts that was less than the maximum possible sentence on any one count, his conviction must be sustained if any one count is valid. *Barenblatt, supra*, 360 U.S. at 126.

[16] Although petitioner's objections were in the form of a motion to vacate the subpoenas and set aside the hearings, neither counsel nor the witnesses on whose behalf the motion was filed, including petitioner, asked for a ruling before being sworn. Counsel merely asked that his motion challenging the Committee's jurisdiction be filed for incorporation in the record. And the witnesses in fact appeared in response to the subpoenas, were sworn, and answered some questions.

[17] The subcommittee's counsel stated at the Hearings that the motion had been considered by the subcommittee at the beginning of the hearings and that the subcommittee had unanimously voted at that time to overrule it (R. 114).

nesses, including petitioner, on whose behalf the objections had been filed. It was also made clear to petitioner by the fact that he was specifically directed to answer each question upon which he was convicted [18] (R. 74-76, 89-92, 94-96, 102-103, 104), and specifically informed that such directions to answer were being given because his refusal to answer would form the basis for a motion to cite him for contempt (R. 74). Compare *Bart* v. *United States*, 349 U.S. 219, 222. This Court held in *Quinn* v. *United States*, 349 U.S. 155, 170, on which petitioner relies, that the Committee is not required to use any set formula to indicate its disposition of an objection. Here, plainly, petitioner was not "forced to guess the committee's ruling" on his objection to its power to proceed, and therefore "he has no cause to complain" (*ibid.*).

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[18] In addition, the subcommittee expressly rejected, in advance, substantially the same objections petitioner had made in his motion when they were renewed as to specific questions. Compare petitioner's motions, set forth in Statement, *supra* pp. 7-8, with the objections made to the question forming the basis of count one: R. 59-62, 65, 66-67, 70-71, 73 and 75-76; count two: R. 87, 88, 89, 90; count three: 93-94, 95-96; count four: R. 100-101, 102-103; and count five: R. 104.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the petition for a writ of certiorari should be denied.

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